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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,381	12/30/2003	Matthew T. Fitton	20,091	8953
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EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/750,381

Applicant(s)

FITTON, MATTHEW T.

Examiner

MELANIE J. HAND

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5-12, 19-30, 33-35 and 38-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 13-18, 31, 32, 36, 37 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 7, 2008 has been entered.

Response to Arguments

2. Applicant's arguments filed March 7, 2008 have been fully considered but they are not persuasive.

With respect to arguments regarding the rejection of claims 31, 32, 36 and 42: Applicant argues that Coates does not teach an absorbent pad in Fig. 10. Fig. 10 is an alternate embodiment of the sling in Fig. 5 with the only difference being that the pocketed sling is adjusted to fit the male anatomy. (¶0082) In all other aspects, the article of Fig. 10 is identical to Fig. 5, including the presence of absorbent pad 18. (¶0070) As to a location of the pad within approximately a front half of the garment, Coates teaches that the instant pocketed sling (sling 500 having pocket 42 in Fig. 5 and sling 19 having pocket 42 in Fig. 10) is attached under elastic 11 wherein substantially the entire length of pad 18 is considered herein to be located within approximately a front half of the instant garment. As to the amendment to independent claim 31 to include the limitation that the absorbent pad is located entirely within approximately the front half of the garment, there is no support or antecedent basis in the specification for the term "front half". There is support in the drawings cited by applicant, but this support is merely

for an absorbent pad that is present in at least the front part of the garment. The drawings are insufficient as to support for a pad located within approximately a front half of the garment, as this is a measure of dimension or distance that drawings which are not to scale cannot be relied upon to support. Further, the term approximately does not appear anywhere in the disclosure as originally filed. Therefore, the limitation "located entirely within approximately a front half of the garment" is given its broadest reasonable interpretation by examiner. Thus, the instant pad taught by Coates is considered herein to anticipate the limitation "located entirely within approximately the front half of the garment", as substantially all of pad 18 is present in the front portion of the instant article.

With respect to arguments regarding the rejection of claims 1, 2, 4, 13-18 and 37: Applicant argues that neither Coates nor Yamamoto teaches an absorbent pad located entirely within approximately a front half of the garment. This is not persuasive for reasons stated *supra* with respect to the rejection of claims 31, 32, 36 and 42. Applicant further argues that there is no suggestion to modify Coates to add a second elastomeric waistband. If applicant is referring to the elasticized support waistband, in the claimed invention as in the prior art of Coates, the second support waistband to which applicant refers is part of a physically separate portion of the claimed garment from the shell waistband. The prior art of Yamamoto was introduced to remedy the deficiency of Coates with respect to the support waistband. Yamamoto teaches a pad suspended with the help of a pocket sling much like the pocket sling and pad taught by Coates. The garment of Yamamoto supplies its own waistband, thus the article of the combined teaching of Coates and Yamamoto yields an article having a shell with a pad wherein the shell and pad structures have their own waistbands. The prior art of Yamamoto teaches the second waistband that examiner believes applicant is referring to. As to applicant's argument that Yamamoto's teaching of an outer cover does not provide sufficient motivation to add a second waistband,

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wherein second waistband appears now to refer to the claimed shell waistband, the article of Coates provides an outer cover. As stated in the previous Office action, there is motivation to use the article of Coates with the article of Yamamoto because the article of Yamamoto is intended to be an incontinence guard and it is universally understood (including by one of ordinary skill in the art) that the user would not wear just the incontinence guard without an outer cover or garment during use, hence the motivation to modify Coates so as to have a second waistband. Applicant refers to modifying Yamamoto so as to have a second waistband. However, this is procedurally incorrect as Yamamoto is the secondary reference that was introduced to remedy the deficiencies of Coates. Thus, the motivation needed is motivation to modify the article of Coates, not the article of Yamamoto. Applicant further argues that there is no suggestion that the support waistband is connected to the shell waistband of the combined teaching of Coates and Yamamoto as recited in claim 1. It is stated clearly in the rejection of claim 1 at the bottom of page 5 of the previous Office action that the elasticized waist support waistband is connected to the bodyside surface of the garment shell (not the shell waistband). The rejection has been rephrased to state that limitation of the support waistband connected to the bodyside surface of the shell is rendered obvious by Coates' teaching of straps 121 that are fully capable of connecting to a support waistband such as that taught by Yamamoto, rather than being capable of connecting to said support waistband.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Antecedent basis must be provided for the term "front half" recited in independent claims 1 and 31.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 2, 4, 13-18, 31, 32, 36, 37 and 42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for the limitation "an absorbent pad located entirely within approximately a front half of the garment". While the drawings provide some amount of support for a pad located mostly in the front of the garment, there is no support in the specification for a front half and the drawings cannot be relied upon to provide definition for the term "front half". Further, the word "approximately" does not appear anywhere in the disclosure as originally filed and is thus also not supported.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 31, 32, 36 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Coates (U.S. Patent Application Publication No. 2003/0216705).

With respect to **claim 31**: Coates teaches an absorbent garment 10 comprising a garment shell 15 and an inner absorbent assembly. The garment shell 15 comprises a front panel assembly defined by the front portions of the two panels joined at the center seam defining a front waist region, a back panel assembly defined by the back portions of the two panels joined at the center seam defining a back waist region (Fig. 10), and a crotch region extending longitudinally between and interconnecting the front waist region, and the back waist region. The front panel assembly is connected to the back panel assembly so as to define a waist opening and at least one leg opening. The garment shell 15 further comprises an elasticized shell waistband 11 (Fig. 10, ¶0082). The elasticized shell waistband 11 is a waistband and is therefore necessarily adapted to encircle the wearer, specifically at the wearer's waist. The garment shell 15 defines a body-side surface and an outward surface. The inner absorbent assembly 18 comprises an absorbent pad 18, the absorbent pad 18 defining a front region and a back region, the front region being connected to the front waist region of the garment shell 15, and the back region terminating in the crotch region of the garment shell 15 (Fig. 10). With regard to the limitation "wherein the absorbent pad is located entirely within approximately a front half of the garment", the terms "approximately" and "front half" do not appear anywhere in the disclosure and are thus not defined. Therefore, the limitation "located entirely within approximately a front half of the garment" is given its broadest reasonable interpretation by examiner. Thus, the instant pad taught by Coates is considered herein to anticipate the limitation "located entirely within approximately the front half of the garment", as substantially all of pad 18 is present in the front portion of the instant article. Coates further teaches at least one posterior support strap in the form of the back portion of sling 19 which connects the absorbent pad to the back waist region of the garment shell 15. The at least one posterior support strap 19 connects the absorbent pad 18 to the back waist region of the garment shell 15 while remaining free of attachment to the

crotch region of the garment shell 15 inasmuch as the sling is attached only to waist elastic 11 at the back center of garment shell 15. (Fig. 10, ¶¶0050,0065,0082,0086,0087,0089)

With respect to **claim 32**: The at least one posterior support strap 19 taught by Coates is narrower in width than the absorbent pad 18 inasmuch as pad 18 in the embodiment of Fig. 10 and Fig. 10C now includes elastic cupping 44 attached thereto and is received by, i.e. held on, strap 19 and extends beyond the edges of strap 19. (Fig. 10C, ¶0085)

With respect to **claim 36**: Absorbent garment 10 taught by Coates further comprises at least one anterior support strap in the form of the pocketed sling frontal portion of sling 19 that extends between the front edge of pad 18 and the front center of waist elastic 11, connecting the elasticized support waistband to the absorbent pad 18. (Fig. 10, ¶0082)

With respect to **claim 42**: The garment 10 also includes a crotch region interconnecting the front and back panels to define two leg openings. (Fig. 10)

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 2, 4, 13-18 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coates ('603) in view of Yamamoto et al (U.S. Patent No. 5,700,256).

With respect to **claim 1**: Coates teaches an absorbent garment 10 comprising a garment shell 15 and an inner absorbent assembly. The garment shell 15 comprises a front panel assembly defined by the front portions of the two panels joined at the center seam defining a front waist

region, a back panel assembly defined by the back portions of the two panels joined at the center seam defining a back waist region (Fig. 10). The front panel assembly is connected to the back panel assembly so as to define a waist opening and at least one leg opening. (Fig. 10) The garment shell 15 further comprises an elasticized shell waistband 11 (¶10082). The elasticized shell waistband 11 is adapted to encircle the wearer at the waist. The garment shell 15 defines a body-side surface and an outward surface. The inner absorbent assembly comprises an absorbent pad 18, the absorbent pad defining a front region and a back region.

With regard to the limitation "wherein the absorbent pad is located entirely within approximately a front half of the garment", the terms "approximately" and "front half" do not appear anywhere in the disclosure and are thus not defined. Therefore, the limitation "located entirely within approximately a front half of the garment" is given its broadest reasonable interpretation by examiner. Thus, the instant pad taught by Coates is considered herein to anticipate the limitation "located entirely within approximately the front half of the garment", as substantially all of pad 18 is present in the front portion of the instant article.

Coates does not teach an elasticized support waistband. Yamamoto teaches an absorbent pad suspended from an elastic waistband by pairs of anterior and posterior elastomeric suspending straps adapted for use with an outer cover such as a garment shell. The elasticized support waistband defines a front waist section and a back waist section, the front waist section being connected to an absorbent pad front region ('256, Fig. 1), and at least one posterior support strap 3 connecting the elasticized support waistband to the absorbent pad ('256, Fig. 1). Yamamoto teaches that the straps allow for adjustment by the wearer to both bring the pad into proper fitting contact with the user's pubic area and the maintenance of the pad in this desired position to prevent leakage. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Coates so as to have an elastic support waistband as

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taught by Yamamoto be comprised of elastomeric material attached via at least one posterior support strap to an absorbent pad as taught by Yamamoto to provide accessibility the user in terms of adjustment for proper fit and to prevent leakage. ('256, Fig. 1, Col. 2, lines 13-18, 25-27, 35-50) The elasticized support waistband of the combined teaching of Coates and Yamamoto is connected to the body side surface of the instant garment shell via its attachment to sling 19, which is attached to the bodyside surface of the garment shell at the elasticized shell waistband.

With respect to **claim 2**: The elasticized shell waistband of the combined teaching of Coates and Yamamoto defines a shell waistband edge, and the elasticized support waistband of the combined teaching of Coates and Yamamoto defines a support waistband edge, and the shell waistband edge and the support waistband edge are coterminous. ('705, Fig. 10) The motivation to combine the teachings of Coates so as to include an elasticized support waistband as taught by Yamamoto is stated *supra* with respect to claim 1.

With respect to **claim 4**: The at least one posterior support strap 19 taught by Coates is narrower in width than the absorbent pad 18 inasmuch as pad 18 in the embodiment of Fig. 10 and Fig. 10C now includes elastic cupping 44 attached thereto and is received by, i.e. held on, strap 19 and extends beyond the edges of strap 19. (Fig. 10C, ¶0085)

With respect to **claim 13**: Absorbent garment 10 taught by Coates further comprises at least one anterior support strap in the form of the pocketed sling frontal portion of sling 19 that extends between the front edge of pad 18 and the front center of waist elastic 11, connecting the elasticized support waistband to the absorbent pad 18. (Fig. 10, ¶0082)

With respect to **claim 14**: The anterior support strap of Coates is connected to the front region of the absorbent pad of the combined teaching of Coates and Yamamoto. (Fig. 10, ¶0082)

With respect to **claim 15**: Coates does not teach explicitly that the at least one posterior strap is elastomeric. Yamamoto teaches an absorbent pad suspended from an elastic waistband by pairs of anterior and posterior elastomeric suspending straps adapted for use with an outer cover such as a garment shell. Yamamoto teaches that the straps allow for adjustment by the wearer to both bring the pad into proper fitting contact with the user's pubic area and the maintenance of the pad in this desired position to prevent leakage therefore it would be obvious to one of ordinary skill in the art to modify the straps taught by Coates so as to be comprised of elastomeric material as taught by Yamamoto to provide accessibility the user in terms of adjustment for proper fit and to prevent leakage. ('256, Fig. 1, Col. 2, lines 13-18, 25-27, 35-50)

With respect to **claim 16**: The garment taught by Coates includes a crotch region interconnecting the front and back panels to define two leg openings. ('705, Fig. 10)

With respect to **claim 17**: The absorbent pad back region of the pad taught by Coates defines a back end and the absorbent pad front region defines a front end, and wherein the absorbent pad further defines two side edges, each side edge extending between the front and back end, and wherein the two side edges, the front end, and the back end are urged upward generally toward the wearer to define an upwardly urged periphery of the absorbent pad. ('705, Figs. 5,10)

With respect to **claim 18**: The combined teaching of Coates and Yamamoto does not explicitly teach that the upwardly urged periphery of the absorbent pad comprises absorbent material that provides at least about 20% of an absorbent capacity of the absorbent pad. However, applicant has not established sufficient criticality for such a capacity percentage being present in the upwardly urged periphery. Since the amount of absorbent material present in the periphery will dictate the amount of fluid absorbed and stopped from leaking outwardly from the garment, such capacity percentage is considered herein to be a result effective variable. It would be obvious to one of ordinary skill in the art to upwardly urge the side, front and back edges of the instant pad so as to achieve a configuration in which an upwardly urged periphery is formed that provides at least 20% of the capacity of said pad in order to improve the absorbent capacity in the needed areas for a garment intended to fit a male and to improve the leakage protection capability of the instant article. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. Discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art. *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 37**: Coates does not teach explicitly that the at least one posterior strap is elastomeric. Yamamoto teaches an absorbent pad suspended from an elastic waistband by pairs of anterior and posterior elastomeric suspending straps adapted for use with an outer cover such as a garment shell. Yamamoto teaches that the straps allow for adjustment by the wearer to both bring the pad into proper fitting contact with the user's pubic area and the maintenance of the pad in this desired position to prevent leakage therefore it would be obvious to one of ordinary skill in the art to modify the straps taught by Coates so as to be comprised of

elastomeric material as taught by Yamamoto to provide accessibility the user in terms of adjustment for proper fit and to prevent leakage. ('256, Fig. 1, Col. 2, lines 13-18, 25-27, 35-50)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761